



August 29, 2016

Via ECFS

Marlene H. Dortch, Secretary  
Federal Communications Commission  
Office of the Secretary  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

**Re: WC Docket No. 10-90 *et al.*  
West Kentucky and Tennessee Telecommunications Cooperative  
Petition for Limited Waiver of Section 51.917(b)(7)(ii), 2011 Rate-of-Return Carrier  
Base Period Revenue  
Written Ex Parte Notice**

Dear Ms. Dortch,

West Kentucky and Tennessee Telecommunications Cooperative (“WK&T” or the “Cooperative”) hereby supplements its pending petition for limited waiver of Section 51.917(b)(7)(ii)<sup>1</sup> to address questions raised in discussions with Commissioners’ offices during recent visits.<sup>2</sup> The Petition was unopposed when the Commission sought public comment on it in 2014. WK&T requests grant of the Petition.

WK&T is a small rate-of-return carrier serving about 13,000 subscribers in rural western Kentucky and Tennessee, seeking to provide them the most advanced telecommunications services possible. The requested waiver would permit WK&T to correct its Base Period Revenue (“BPR”), used in calculating payments by the intercarrier compensation (“ICC”) recovery mechanism. If the waiver is granted, WK&T’s BPR would be adjusted to include revenues totaling [REDACTED] that, because of a billing error, WK&T incorrectly did not receive from unaffiliated larger carriers by March 31, 2012. The Cooperative collected these revenues, which are not in dispute, as quickly as possible by December 13, 2012.

Grant of the waiver would advance the public interest by permitting WK&T to establish a BPR that accurately reflects its revenue for the period contemplated in the Commission’s rules, consistent with their intent. The adjusted BPR would also concretely further the public interest by providing sufficient income for WK&T to provide adequate service to its rural customers and to service its financial obligations, including loans from the Rural Utilities Service (“RUS”). Because WK&T collected these revenues on an arms’ length basis from much larger and completely unaffiliated carriers, the waiver does not implicate any concerns that the Cooperative is somehow trying to improperly inflate its BPR. To the contrary, grant of the waiver will prevent injustice to WK&T customers who rely on the Cooperative for their telecommunications services.

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<sup>1</sup> See Second Amended Petition of West Kentucky and Tennessee Telecommunications Cooperative for Limited Waiver of 47 C.F.R. § 51.917(b), WC Docket No. 10-90 *et al.*, filed March 10, 2014 (“Petition”).

<sup>2</sup> See Letter from John Kuykendall, Vice President, JSI, to Marlene H. Dortch, Secretary, *Ex Parte* Presentation in WC Docket No. 10-90 dated August 12, 2016.

**I. The West Kentucky and Tennessee Telecommunications Cooperative.**

Since WK&T was incorporated in 1951 as a not-for-profit cooperative, it has grown from serving 1,350 subscribers in ten exchanges to serving about 13,000 subscribers in twenty-two exchanges. The Cooperative's purpose is to provide its members with the highest quality, most technically advanced, and most dependable service at the most reasonable prices, with quality customer service being its highest priority.<sup>3</sup> The Cooperative's deep partnership with our communities is designed to provide a foundation for economic growth and opportunities in communities that otherwise might not have access to advanced services.

WK&T's service territory in western Kentucky and Tennessee includes primarily a low-income population with a median average income of approximately \$31,577, 35% lower than the national average, ranking the area in the lowest 10% nationwide. The unemployment rate for these counties ranges from 6.1% to 10.6% and a high percentage of the populace receives some form of monthly government low-income assistance. Only 13.2% of the region's population has earned a college degree.

In 2010, WK&T was proud to receive a \$123.8 million award from RUS to help construct a fiber-to-the-home ("FTTH") network, which provides its members with the most technological advanced telecommunications network for rapid communications to meet the sophisticated needs of the 21st century. WK&T now offers high speed broadband to about 9,000 customers and digital television service to about 3,600 customers.<sup>4</sup> However, as explained in more detail below, WK&T has accrued significant debt in loans in order to make these investments.

The economic realities that WK&T faces in serving its members mean that the Cooperative does not have a pool of funds readily available for the network deployments and operational improvements that could benefit its customers in western Kentucky and Tennessee. Every operational decision of the Cooperative involves a difficult and close balancing of resources. The loss of any substantial source of funding, in particular the ICC recovery payments that WK&T would not receive without the requested waiver, is a major issue for the Cooperative and its members.

**II. The Requested Waiver Will Serve the Public Interest.**

Because the requested adjustment to BPR would advance the public interest, there is good cause for granting the waiver.<sup>5</sup> Under Section 1.3, the Commission "may exercise its discretion to

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<sup>3</sup> The Cooperative's service territory encompasses over 2,200 route miles. In June of 2006, West Kentucky acquired Yorkville Telephone Company (Tennessee), welcoming over 2,000 Yorkville customers into the WK&T family.

<sup>4</sup> The Cooperative also operates a retail technology store, with locations in Mayfield and Murray, Kentucky, and Yorkville, Tennessee.

<sup>5</sup> See 47 C.F.R. § 1.3 (Waiver of a Commission rule is warranted "if good cause therefor is shown."). See also *Northeast Cellular Tel. Co., L.P. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) ("*Northeast Cellular*"); *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969) ("*WAIT Radio*").

waive a rule where particular facts would make strict compliance inconsistent with the public interest,” or alternatively, where “special circumstances warrant a deviation from the general rule and such a deviation will serve the public interest.”<sup>6</sup>

**A. *The Requested Waiver Corrects a Billing Error for Services Rendered in FY 2011 but Not Collected by March 31, 2012.***

For rate-of-return carriers, BPR is “the sum of certain ICC intrastate switched access revenues and net reciprocal compensation revenues received by March 31, 2012, for services provided during FY 2011, and the projected revenue requirement for interstate switched access services provided during the 2011-2012 tariff period.”<sup>7</sup> As the Commission has explained, the BPR “is calculated only one time, but is used during each step of the ICC recovery mechanism calculations for each year of the transition” so “any inaccuracies in the BPR calculation would carry forward in future recovery mechanism payments.”<sup>8</sup>

Because of a billing error,<sup>9</sup> when WK&T’s BPR was established, it did not (and still does not) include some revenues for services provided in FY 2011 that ordinarily would have been billed and collected by March 31, 2012. The affected rate elements, for Carrier Common Line/Non-Traffic Sensitive Revenue (“CCL/NTSR”) and Transport Interconnection Charge (“TIC”),<sup>10</sup> were in WK&T’s intrastate access tariff in Kentucky.<sup>11</sup> When WK&T discovered the error, it acted as quickly as possible, consistent with industry practice, to backbill and collect the FY 2011 revenues from the following carriers: AT&T, BellSouth, Sprint, Qwest, Level 3, and Verizon/MCI.<sup>12</sup> WK&T is not affiliated with any of these carriers, and the collections proceeded

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<sup>6</sup> *Northeast Cellular*, 897 F.2d at 1166 (citation omitted), 1164; *see also WAIT Radio*, 418 F.2d at 1159 . The Commission has applied this waiver standard in the context of Section 51.917(b). *See Connect America Fund et al.*, 29 FCC Rcd 9958, 9963, para. 15 (2014) (“August 2014 Halo Waiver Order”) (granting waivers to carriers seeking BPR adjustments due to Halo’s access avoidance scheme and subsequent bankruptcy).

<sup>7</sup> *Id.* at 9960, para. 6. The BPR “is then reduced by 5% in each year of the transition.” *Id.*

<sup>8</sup> *Id.* at 9961, para. 7.

<sup>9</sup> During FY 2011 the Cooperative submitted monthly bills to six unaffiliated carriers which contained minutes-of-use for actual service provided during that period of time, but did not include correct rating or pricing information for two rate elements.

<sup>10</sup> The CCL/NTSR and CIC rate elements are intrastate access elements included in Transitional Intrastate Access Service, revenues from which are used to calculate the BPR. *See* 47 C.F.R. §51.917(b)(7)(ii) (BPR includes “Fiscal Year 2011 revenues from Transitional Intrastate Access Service received by March 31, 2012.”). Transitional Intrastate Access Service includes the following: “terminating End Office Access Service that was subject to intrastate access rates as of December 31, 2011; terminating Tandem-Switched Transport Access Service that was subject to intrastate access rates as of December 31, 2011; and originating and terminating Dedicated Transport Access Service that was subject to intrastate access rates as of December 31, 2011.” 47 C.F.R. § 51.903(j).

<sup>11</sup> WK&T is a concurring carrier in Duo County Cooperative Corp., Inc.’s Intrastate Access Tariff, on file with the Public Service Commission of Kentucky.

<sup>12</sup> In conducting the backbilling, WK&T followed industry procedures and procedures set forth in the NECA interstate access tariff in which it participates, which specifies a twenty-four month window for

on an arms-length basis. By December 13, 2012, WK&T had collected the FY 2011 revenues totaling [REDACTED] that it now requests to be included in the BPR,<sup>13</sup> and these revenues are not in dispute.<sup>14</sup>

To be clear, WK&T is not seeking waiver of any high cost filing deadline. Rather, WK&T is seeking to include otherwise-eligible revenues in its BPR that it received after March 31, 2012 because of the billing error. The fact that AT&T, BellSouth, Sprint, Qwest, Level 3, and Verizon/MCI, none of which is affiliated with WK&T, agreed to pay these revenues provides assurance to the Commission that the services were in fact provided by WK&T and that the Cooperative is not somehow trying to improperly inflate its BPR. These facts fully support granting the waiver.

***B. Grant of the Waiver Would Advance the Purpose of the ICC Recovery Mechanism and Permit WK&T to Continue to Provide High-Quality Service to Its Customers.***

The requested waiver would serve the public interest by fulfilling for WK&T the purpose of the ICC recovery rules for rate-of-return carriers, which is to “provid[e] a revenue stream to replace, in part, ICC revenue reductions resulting from the ICC reforms adopted in the *Transformation Order*.”<sup>15</sup> In a BPR waiver order over two years ago, the Commission found that “accurate BPR calculations are critical to the successful operation of the recovery mechanism” because, as mentioned above, any inaccuracies in the BPR calculation are carried forward for years in future recovery mechanism payments.<sup>16</sup> Grant of WK&T’s requested waiver would permit the Cooperative to base its participation in the recovery mechanism on an accurate BPR calculation by including revenues that were associated with minutes-of-use for “actual service provided” that were billed during FY2011 and should have been included in WK&T’s BPR but for the billing error and the time needed to correct that error.

The public interest would not be served if the ICC recovery mechanism were to provide “insufficient revenue” to a rural cooperative due to an error which the cooperative took steps to remedy as quickly as possible.<sup>17</sup> Without the requested waiver, WK&T’s inaccurate BPR would continue to have a compounded impact for years to come, with a profoundly negative impact on the Cooperative’s ability to provide necessary services to its primarily low-income population.

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backbilling. See *Brooten v. AT&T*, 12 FCC Rcd 13343, 13350 at para. 14 (Com. Car. Bur. 1997) (noting that AT&T told Brooten that the carrier was authorized to backbill charges “for up to two years under the ‘statute of limitations’ it follows for backbilling, Section 415(a)”).

<sup>13</sup> Tab A contains copies of the tariff pages showing how the CCL/NTSR true-up is to be calculated (indicated on pages 3-23 and 3-24) and relevant tariff pages for the TIC charge.

<sup>14</sup> See *August 2014 Halo Waiver Order* at 9960, para. 5 and n. 14.

<sup>15</sup> *Id.* at 9965, para. 22.

<sup>16</sup> *Id.* at 9961, para. 7.

<sup>17</sup> See *id.* at 9965, para. 22.

As shown in the Petition, if WK&T is not permitted to make the adjustment, the cumulative negative effect over a five year period is [REDACTED].<sup>18</sup> Given that the recovery mechanism for WK&T will continue for many more years to come, this amount will continue to grow exponentially. As illustrated in Tab B, this “insufficient revenue” has already impacted the Cooperative’s return on equity, investment and rate base. Additionally, revenues based on an accurate BPR are necessary given the significant debt that WK&T has accrued in order to make the investments in deploying scalable telecom and broadband networks. As shown on the Cooperative’s 2015 RUS Report contained in its Form 481, WK&T had total debt of [REDACTED]. The principal payments made on Long Term Debt were [REDACTED], and Interest on Funded Debt was [REDACTED]. Grant of the waiver would allow this rural cooperative to have the revenue stream that the ICC recovery mechanism intended so that it may continue to provide high quality service consistent with the intent of the Commission’s rules.

### III. Conclusion

WK&T is proud of its continued network development and improving service to the subscribers in its rural territory. Grant of the requested waiver would further these pro-consumer activities by allowing WK&T’s BPR to operate as intended by including legitimate revenues from service actually provided during FY 2011. The requested waiver is consistent with the purpose of the Commission’s ICC recovery rules and will make the Cooperative whole so that it can continue to serve its customers for years to come.

Respectfully Submitted,

West Kentucky and Tennessee Telecommunications  
Cooperative

By: /s/ Trevor R. Bonnstetter  
Trevor R. Bonnstetter, CEO

Date: August 29, 2016

#### Attachments

cc: Stephanie Weiner  
Claude Aiken  
Travis Litman  
Nicholas Degani  
Amy Bender  
Matt DelNero  
Pamela Arluk

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<sup>18</sup> Petition at 6.

TAB A-1  
CCL/NTSR TARIFF PAGES

# REDACTED - FOR PUBLIC INSPECTION

DUO COUNTY TELEPHONE COOPERATIVE CORP., INC.

PSC KY NO. 2A  
Original Page 3-21

## ACCESS SERVICE

### 3. Carrier Common Line Access Service (Cont'd)

#### 3.9 Non-Traffic Sensitive Revenue Charge

All customers of the Telephone Company's Switched Access Services provided in Section 6, excluding Feature Group A Access Service provided to end users for intraLATA Foreign Exchange (FX) service, will be subject to a Non-Traffic Sensitive Revenue (NTSR) charge.

##### 3.9.1 General Description

The NTSR charge is developed from the Telephone Company's Non-Traffic Sensitive (NTS) Revenue Requirement per access line per month rate, as set forth in Section 17.1.2 following.

The NTSR charge will apply to all intrastate interLATA and intrastate intraLATA terminating minutes of use for all customers. For the purpose of determining the NTSR charge, terminating minutes are defined to be those minutes to which the terminating carrier common line rate would be applied as indicated in Sections 3.2.3 and 3.8.5(E) preceding. These minutes will be referred to as terminating rated access minutes in this section.

The NTSR charge will not be reduced by the MTS and MTS-type resale credits described in Section 3.6.

##### 3.9.2 Determination of Monthly NTS Revenue Requirement

During 1991, the Telephone Company will determine its monthly NTS Revenue Requirement by multiplying the NTS Revenue Requirement per access line per month rate, as set forth in Section 17.1.2 following, by the number of Telephone Company access lines in service on June 30, 1990.

For each subsequent calendar year, the Telephone Company will determine its monthly NTS Revenue Requirement by multiplying the NTS Revenue Requirement per access line per month rate, as set forth in Section 17.1.2 following, by the number of Telephone Company access lines in service on December 31st of the previous year.

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PURSUANT TO KOT 10011,  
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SECRETARY OF THE COMMISSION

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By: W.W. Magruder, Executive Vice President

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DUO COUNTY TELEPHONE COOPERATIVE CORP., INC.

PSC KY NO. 2A  
Original Page 3-22

ACCESS SERVICE

3. Carrier Common Line Access Service (Cont'd)

3.9 Non-Traffic Sensitive Revenue Charge (Cont'd)

3.9.2 Determination of Monthly NTS Revenue Requirement (Cont'd)

The access lines used in the calculation shall be the same access lines reported by the Telephone Company to the National Exchange Carrier Association.

If the number of access lines decreases during subsequent years, the monthly NTS Revenue Requirement shall not decrease below from the prior period revenue requirement.

3.9.3 Billing of the NTSR Charge

The Telephone Company may select one of the billing methods, as set forth in (A) and (B) following, to calculate the monthly NTSR charge applicable to each customer. The Telephone Company will notify the customer which of the billing methods will be used.

(A) Percent Distribution Method

The Telephone Company will determine each customer's monthly intrastate terminating rated access minutes, as set forth in Section 3.9.1 preceding. The sum of all customers' monthly intrastate terminating rated access minutes will be used by the Telephone Company to determine the percent distribution for each customer.

The monthly NTSR charge for each customer will be determined by multiplying the Telephone Company's monthly NTS Revenue Requirement by the customer's percent distribution, as calculated above.

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PSC KY NO. 2A  
Original Page 3-23

ACCESS SERVICE

3. Carrier Common Line Access Service (Cont'd)

3.9 Non-Traffic Sensitive Revenue Charge (Cont'd)

3.9.3 Billing of the NTSR Charge (Cont'd)

(B) Per Minute Rate Method

The Telephone Company will develop an NTSR rate per terminating rated access minute by dividing its annual NTS Revenue Requirement by the total terminating rated access minutes for all customers. The total terminating rated access minutes for all customers shall be either the previous year's historical total or a Telephone Company forecasted total.

The monthly NTSR charge for each customer will be determined by multiplying the NTSR rate per terminating rated access minute, developed above, by each customer's monthly terminating rated access minutes as set forth in Section 3.9.1 preceding.

To facilitate the billing of the monthly NTSR charge, the Telephone Company may, at its option, combine with the NTSR rate per terminating rated access minute the terminating Carrier Common Line rate set forth in Section 17.1.1, in its billing system. The Telephone Company may exercise this option only when using the Per Minute Rate Method.

This billing method will require the Telephone Company to perform a true-up calculation for each customer on an annual basis. The sum of all customers' actual annual intrastate terminating rated access minutes will be used by the Telephone Company to determine the annual percent distribution for each customer.

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DUO COUNTY TELEPHONE COOPERATIVE CORP., INC.

PSC KY NO. 2A  
Original Page 3-24

ACCESS SERVICE

3. Carrier Common Line Access Service (Cont'd)

3.9 Non-Traffic Sensitive Revenue Charge (Cont'd)

3.9.3 Billing of the NTSR Charge (Cont'd)

(B) Per Minute Rate Method (Cont'd)

> The annual total of the monthly NTSR billing to each customer will be adjusted to an amount that is equal to the Telephone Company's annual NTS Revenue Requirement multiplied by the customer's annual percent distribution.

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Original Page 17-2

ACCESS SERVICE

17. Rates and Charges (Cont'd)

17.1 Carrier Common Line Access Service (Cont'd)

17.1.2 Non-Traffic Sensitive Revenue

Regulations concerning Non-Traffic Sensitive Revenue charges are set forth in Section 3.9. The Non-Traffic Sensitive Revenue Requirement per access line per month rate for each of the Issuing Carriers follows:

	<u>Per Access Line Per Month Rate</u>
Duo County Telephone Coop. Corp., Inc.	\$ 8.52
Ballard Rural Telephone Coop. Corp., Inc.	\$ 6.31
Brandenburg Telephone Company, Inc.	\$ 9.67
Gearheart Communications, Inc. dba Coalfields Telephone Company, Inc.	\$10.38
Foothills Rural Tel. Coop. Corp., Inc.	\$ 9.53
Highland Telephone Cooperative, Inc.	\$ 8.80
Logan Telephone Cooperative, Inc.	\$ 4.84
Mountain Rural Telephone Coop. Corp.	\$10.88
North Central Telephone Coop., Inc.	\$ 8.74
Peoples Rural Tel. Coop. Corp., Inc.	\$10.46
South Central Rural Tel. Coop. Corp., Inc.	\$ 5.81
Thacker-Grigsby Telephone Company	\$10.64
> West Kentucky Rural Tel. Coop. Corp., Inc.	\$ 7.39

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TAB A-2  
TIC TARIFF PAGES

ACCESS SERVICE

9. Directory Assistance Service (Cont'd)

9.1 General Description (Cont'd)

9.1.3 Rate Categories (Cont'd)

(B) Directory Transport Service (Cont'd)

- Entrance Facility for the transport of the DA call from the customer's premises to the serving wire center of that premises.
- Direct Trunked Transport (i.e., Direct Trunked Facility and Direct Trunked Termination) for the transport of the DA call from the customer's serving wire center to the DA location without switching at a tandem or from the serving wire center to the tandem.
- Tandem Switched Transport (i.e., Tandem Switched Facility, Tandem Switched Termination, and Tandem Switching) for the transport of the DA call from the tandem to the DA location.
- > - Transport Interconnection Charge for the Local Transport costs that are not recovered by the Entrance Facility, Direct Trunked Transport, Tandem Switched Transport, Multiplexing, or dedicated signaling (i.e., SS7) rates.
- Multiplexing DS3 to DS1 Multiplexing charges apply when a High Capacity DS3 Entrance Facility or Direct Trunked Facility is connected with High Capacity DS1 Direct Trunked Transport. The DS3 to DS1 multiplexer will convert a 44.736 Mbps channel to 28 DS1 channels using digital time division multiplexing.

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PSC KY NO. 2A  
Original Page 9-14

## ACCESS SERVICE

### 9. Directory Assistance Service (Cont'd)

#### 9.4 Rate Regulations (Cont'd)

##### 9.4.2 Directory Assistance Service Call Charge

The Directory Assistance service call charge, as set forth in 17.2.5(A) following, applies for each call to DA Service. A call is a call which has been answered by a DA operator. The charge applies whether or not the DA operator provides the requested telephone number. The number of calls answered by DA operators will be accumulated by Telephone Company measuring equipment. A credit for the provision of an incorrect telephone number will be applied as set forth in 9.4.8 following.

##### 9.4.3 Directory Transport Service

The premium Local Transport charges set forth in 17.2 following are also applicable to Directory Transport Service and will be assessed on the same basis as the Switched Access Local Transport rate elements set forth in 6.1.3(A) preceding:

- Entrance Facility
- Direct Trunked Transport
- Tandem Switched Transport
- Multiplexing
- Transport Interconnection Charge

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ACCESS SERVICE

17. Rates and Charges (Cont'd)

17.6 Rate Tables

17.6.1 Transport Interconnection Charge (TIC) and Local Switching (LS) Rate Bands

<u>Company Name</u>	<u>State</u>	<u>Study Area Number</u>	<u>Rate Band</u>	
			<u>TIC</u>	<u>LS</u>
Ballard Rural Tel. Coop. Corp., Inc.	KY	260396	4	6
Brandenburg Telephone Company	KY	260398	1	5
Duo County Tel. Coop., Inc.	KY	260401	4	4
Foothills Rural Telephone Coop. Corp.	KY	260406	3	4
Gearheart Communications Company, Inc.				
dba Coalfields Telephone Co., Inc.	KY	260408	4	7
Highland Telephone Cooperative, Inc.	TN	290565	2	6
Logan Telephone Coop., Inc.	KY	260413	3	6
Mountain Rural Tel. Coop. Corp., Inc.	KY	260414	4	4
North Central Telephone Cooperative, Inc.	TN	290573	1	1
Peoples Rural Telephone Cooperative Corp.	KY	260415	4	5
South Central Rural Tel. Coop. Corp., Inc.	KY	260418	4	6
Thacker/Grigsby Telephone Company	KY	260419	4	5
West Kentucky Rural Telephone Cooperative	KY	260421	4	5

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TAB B

RETURN IMPACT



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TAB B ATTACHMENT REDACTED IN ENTIRETY